

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CONNIE M. LUHMAN

v.

THE KROGER COMPANY

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§

CASE NO. 4:22-cv-3067  
**JURY**

**NOTICE OF REMOVAL**

PLEASE TAKE NOTICE THAT Defendant, The Kroger Co. (incorrectly named as “The Kroger Company” and “The Kroger Company d/b/a Kroger #392,” and hereinafter referred to as “Defendant”), while fully reserving all rights and defenses, files this Notice of Removal to the United States District Court for the Southern District of Texas, Houston Division. Removal is proper under 28 U.S.C. §§1332 and 1441(a) because this is an action over which the United States District Court for the Southern District of Texas, Houston Division, has original diversity jurisdiction, as it is an action between citizens of different states and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. In support of its Notice of Removal, Defendant would respectfully show as follows:

**I. GROUNDS FOR REMOVAL**

1. This case is removable to this Court based on diversity jurisdiction under 28 U.S.C. §§1332 and 1441(a).
2. Plaintiff Connie M. Luhman (hereinafter referred to as “Plaintiff”) is a citizen of and an individual residing in McClennan County, Texas.
3. Defendant The Kroger Co. is an Ohio corporation organized and existing under the laws of the State of Ohio.
4. As described more fully below, the amount in controversy exceeds the \$75,000.00

jurisdictional limits, excluding interest and costs.

## II. PENDING STATE SUIT

5. On July 5, 2022, Plaintiff filed a civil action against Defendant in Cause No. 22-DCV-294949 styled *Connie M. Luhman v. The Kroger Company* in the 400<sup>th</sup> Judicial District Court of Fort Bend County, Texas.<sup>1</sup>

6. According to Plaintiff's Original Petition and Request for Disclosures ("Original Petition"), on July 10, 2022, she was purportedly injured at a store located at 6425 FM 1464, Richmond, Texas, which was allegedly owned, occupied and/or controlled by Defendant.<sup>2</sup>

7. Plaintiff claims that "as Plaintiff was shipping [*sic*] inside of the subject grocery store, Plaintiff slipped and fell on liquid located on one of the aisles in the store."<sup>3</sup> As a result of the incident, Plaintiff claims she suffered "serious bodily injuries."<sup>4</sup>

8. The name and address of the Court from which the case is being removed is:

400<sup>th</sup> Judicial District Court  
Fort Bend County Justice Center  
Courtroom 3B  
1422 Eugene Heimann Cir.  
Richmond, Texas 77469

## III. STATE COURT DOCUMENTS

9. The following documents are attached to this Notice of Removal:

Exhibit A	Plaintiff's Original Petition and Request for Disclosures
Exhibit B	Notice of Service
Exhibit C	Defendant's Original Answer and Verified Denial
Exhibit D	An index of matters being filed

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<sup>1</sup> See Plaintiff's Original Petition and Request for Disclosures attached hereto as Exhibit A.

<sup>2</sup> *Id.* at ¶ 5.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

- D-1 Copy of the state court Docket Sheet/Record
- D-2 Copy of Citation
- D-3 A list of all counsel of record, addresses, telephone numbers, and parties
- D-4 Civil Cover Sheet

#### **IV. TIMING OF REMOVAL**

10. Defendant was served with Plaintiff's Original Petition through its registered agent for service of process, CSC Corporation Service Company, on August 11, 2022.<sup>5</sup> Defendant timely filed its answer.<sup>6</sup>

11. This Notice of Removal is being filed within 30 days after receipt of Plaintiff's Original Petition and is timely filed under 28 U.S.C. §1446(b).<sup>7</sup>

#### **V. JURISDICTION**

12. Pursuant to 28 U.S.C. §1332, a Defendant has the right to remove a case to federal court if the case involves a dispute between completely diverse parties and the amount in controversy, excluding interest and costs, exceeds \$75,000.00.

13. Plaintiff's Original Petition asserts that she seeks monetary relief of "not more than 250,000.00 [*sic*], including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees."<sup>8</sup> Based on the allegations in Plaintiff's Original Petition, this matter is removable to this Court under 28 U.S.C. §1332 because the amount in controversy, excluding interests and costs, exceeds \$75,000.00.

14. Plaintiff also alleges in her Original Petition that she is a resident of Texas.<sup>9</sup>

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<sup>5</sup> See Return on Service attached hereto as Exhibit B.

<sup>6</sup> See Defendant's Original Answer and Verified Denial attached hereto as Exhibit C.

<sup>7</sup> 28 U.S.C. §1446(b).

<sup>8</sup> See Exhibit A, ¶ 2.2.

<sup>9</sup> See Exhibit A at ¶ 3.1.

15. Defendant The Kroger Co. is organized and exists under the laws of the State of Ohio.

16. Accordingly, there exists complete diversity of citizenship between Plaintiff and Defendant under 28 U.S.C. §1332.

## **VI. VENUE**

17. Pursuant to 28 U.S.C. §1441(a), venue for this action is proper in the United States District Court for the Southern District of Texas, Houston Division, as it is the federal judicial district that encompasses the 400<sup>th</sup> Judicial District Court of Fort Bend County, Texas, where the state action was originally filed.

## **VII. NOTICE TO ADVERSE PARTIES AND TO STATE COURT**

18. As the removing party, Defendant will give Plaintiff prompt written notice of this Notice of Removal as required by 28 U.S.C. §1446(d).

19. Defendant will also file a copy of this Notice of Removal with the 400<sup>th</sup> Judicial District Court of Fort Bend County, Texas, where the state court action is currently pending, as required by 28 U.S.C. §1446(d).

## **VIII. ANSWER**

20. Defendant timely filed an answer in the state court action. By removing this action to this Court, Defendant does not waive any defenses, objections, or motions available to it under state or federal law and will timely file responsive pleadings to Plaintiff's Original Petition in this Court as well.

## **PRAYER**

21. **FOR THESE REASONS** and in conformity with 28 U.S.C. §1446, Defendant respectfully removes the civil action styled Cause No. 22-DCV-294949 styled *Connie M. Luhman*

*v. The Kroger Company* on the docket of the 400<sup>th</sup> Judicial District Court of Fort Bend County, Texas. Defendant prays for such other and further relief, both general and special, at law and in equity, to which it may show itself justly entitled.

Respectfully submitted by,

/s/ Adraon D. Greene

Adraon D. Greene

Attorney-in-Charge

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**ATTORNEYS FOR DEFENDANT**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 9<sup>th</sup> day of September 2022, a copy of the above and foregoing was filed electronically with the Clerk of Court using the CM/ECF system, which will send a notice of electronic filing to all CM/ECF participants. I also certify that I have forwarded this filing by regular U.S. Mail, postage pre-paid, this same day to all non-CM/ECF participants.

Wendy A. Thomas  
SBN: 19874700  
**WENDY A. THOMAS**  
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**ATTORNEY FOR PLAINTIFF**

/s/ Adraon D. Greene  
Adraon D. Greene  
Colin Parker